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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of
VERIZON NORTHWEST, INC.,
For Waiver of WAC 480-120-071(2)(a)

Docket No. UT-011439
REPLY BRIEF OF RCC
MINNESOTA, INC.

INTRODUCTION

RCC Minnesota, Inc. (“RCC”) made four main points in its opening brief. No party took issue with any of RCC’s points. First, RCC demonstrated that the Commission’s Line Extension Rule¹ does not apply to wireless carriers, such as RCC. No party, including Qwest, argued that the Line Extension Rule directly applies to wireless carriers. Second, RCC showed that it would not be in the public interest to order RCC to provide enhanced service to the Timm or Taylor locations. Again, no party briefed in opposition to RCC’s argument.² Third, RCC argued that the Commission lacks jurisdiction to order RCC to build additional facilities to serve the Timm and Taylor residences. No other party to this proceeding even addressed to RCC’s jurisdictional argument, let alone opposed RCC’s position.³ Finally, RCC argued that its status

¹ WAC 480-120-071.

² Indeed, Qwest stated that it had “not recommended relief against RCC.” Qwest response at 10-11.

³ Qwest noted that RCC is a “telecommunications company.” Qwest response at 8. However, the fact that RCC may be a “telecommunications company” as well as a “public service company” under the definitions of RCW 80.04.010 does not mean that the Commission has unfettered jurisdiction to regulate such a company. See e.g., RCW 80.66.010.

1 as an ETC does not justify ordering it to construct additional facilities to serve the Timm and
2 Taylor residences. Again, no party, including Qwest, argued that ETC status of RCC justified
3 ordering RCC to build facilities.⁴

4 DISCUSSION

5 Although no party takes issue with any of RCC's principal arguments, Qwest, and
6 Qwest alone, continues to quibble with minor points in RCC's briefing. RCC will address only
7 those points in Qwest's responsive brief that might potentially be considered germane to the
8 Commission's decision regarding RCC.

9 I. A Desire to Conduct Discovery Does Not Justify Joinder as A Party.

10 At the end of the day, it appears that the overriding reason, if not the sole reason,
11 for Qwest seeking to join RCC in this case was for discovery purposes. For instance, Qwest
12 notes:

13 However it is necessary that RCC be a party to a case which investigates RCC's
14 plans to build facilities pursuant to its ETC obligation which the Commission held
15 in the Fifth Supplemental Order was an issue properly raised in a case which
sought a waiver of WAC 48-120-071.

16 Qwest Response Brief at 8. Qwest offers no authority for its proposition that inquiry into the
17 plans of company requires that that company also be joined as a party. The argument presumes
18 that information cannot be obtained in a proceeding from non-parties, which is plainly not true.

19 The Commission has available to it extensive discovery and investigatory powers
20 that are not contingent on a person or company being a party to a proceeding. For example, the
21 Commission has the power to issue subpoenas for the attendance of witnesses and the production
22 of books and papers and documents. RCW 84.04.020. Indeed, under the subpoena power, the
23 party compelled to produce a witness or documents need not even be a public service company.

24
25 ⁴ As Qwest stated in its responsive brief: "Qwest did not ask either in its motion or in testimony for the
26 Commission to order RCC to build facilities." Id. at 8.

1 In addition to its subpoena power, the Commission “shall have the right at any
2 and all times, to inspect the accounts, books, papers, and documents of any public service
3 company. . . .” RCW 80.04.070 This provision of the public service laws further provides that
4 the Commission “may examine under oath any officer, agent or employee of such public service
5 company. . . .” Id. As Qwest noted, even though the Commission’s regulatory authority over
6 wireless carriers is extremely limited under RCW 80.66.010 and federal law, RCC likely falls
7 within the definition of a “telecommunications company”⁵ and therefore could constitute a
8 “public service company” for purposes of these investigatory provisions.⁶

9 Qwest’s argument that it is essential to join and maintain RCC as a party in this
10 docket to conduct an investigation of RCC’s existing services and future plan is illogical and not
11 supportable. Discovery is routinely conducted against nonparties in court actions and the
12 Commission has similar powers to obtain facts and documentary evidence from nonparties. The
13 desire to go on a “fishing expedition” for information from wireless carriers does not justify their
14 joinder in cases such as these.

15 II. The “Adequacy” of RCC’s Service Is Not At Issue In This Proceeding In A Way That
16 Requires RCC To Be A Party.

17 Qwest next argues that, “the adequacy or inadequacy of the regulated carrier’s
18 service is a question which requires that the carrier be a party to the adjudication.” Qwest
19 Response Brief at 8. Qwest’s use of the term “adequacy” regarding RCC’s service is misleading
20 and miscomprehends the nature of this proceeding. Qwest appears to be attempting to bootstrap
21 the “adequacy” of RCC’s service as an issue in this case under the provision of the line extension

22 ⁵ Defined as “[E]very corporation . . . owning, operating or managing any facilities used to provided
23 telecommunications . . . to the general public” RCW 80.04.010. “Telecommunications” is the
24 “transmission of information by wire [or] radio” Id.

25 ⁶ To the extent that the Commission’s jurisdictional limitations might preclude it from compelling
26 production of witnesses, books, and records under Chapter RCW 80.04, it is unlikely that the Commission
would have any greater jurisdiction to accomplish the same result by joining the wireless carrier as a
party.

1 rule that provides that waivers can consider “the comparative price and capabilities of radio
2 communication service. . . .” WAC 480-120-081(7)(b)(ii)(C). Thus, this not truly a proceeding
3 to determine the “adequacy or inadequacy” of RCC’s service. Rather, under the provision of the
4 Commission’s rule, it is simply a “comparison” between the “capabilities” of various radio
5 communication and “other” services that might be available to applicants that are the subject of a
6 waiver request.

7 Qwest clarified its position in this case regarding RCC in its responsive brief.
8 Qwest stated that it had “not recommended relief against RCC.” Qwest response at 10-11. Even
9 more directly, “Qwest did not ask either in its motion or in testimony for the Commission to
10 order RCC to build facilities.” Id. at 8. Since by Qwest’s own admissions, this is not a
11 proceeding to order RCC to do anything—other than provide information—there is absolutely no
12 requirement that RCC be made a party.

13 If this were a proceeding to require RCC to extend or improve its service, to
14 revoke or modify its ETC status because of “inadequate” service, or in any way affect RCC’s
15 regulatory rights or obligations then certainly RCC would be entitled to be a party to protect its
16 interests. Only Qwest supported the joinder of RCC in this docket and Qwest now unequivocally
17 disavows any relief against RCC. RCC does not need to be a party merely for discovery
18 purposes.

19 III. Qwest’s Argument About RCC’s Alleged Obligation to Serve All Customers Is
20 Irrelevant.

21 First Qwest confused an ETC’s obligation to serve an “area” with the obligation
22 to serve a “location.” See RCC opening brief. Now Qwest is confusing the obligation to serve
23 an “area” with an obligation to serve “all customers.” Qwest response at 10. The supposed
24 import of Qwest’s single sentence argument, citing a footnote in a Commission order, is difficult
25 to determine. RCC responds only because Qwest seems to imply that this Commission can
26

1 impose addition service obligations on RCC that go beyond the obligations defined by the FCC
2 under federal law. For the numerous reasons discussed in RCC’s opening brief, that is not true.

3 RCC does not believe that the Commission’s footnote, put in the context of the
4 order it which it resides, reflects a statement by the Commission of an intent to modify federal
5 law, as Qwest implies. The footnote Qwest cites simply states:

6 Obviously, there are some differences between wireless companies and wireline
7 companies that make strict application of set standards to all companies difficult.
8 However, the Commission will insist that all companies provide quality service to
all customers within the designated service area for that company.

9 *In the Matter of Designation of Eligible Telecommunications Carriers*, Dockets Nos. UT-
10 970333-54, n. 11 (Dec. 23, 1997). Such an aside would be difficult to construe as
11 binding precedent in this docket in any event. But Qwest’s injection of yet another
12 purported ETC obligation to serve “customers” without analysis makes it impossible to
13 draw any meaningful conclusion from the Commission’s 1997 order.

14 The Timm and Taylor residents are not currently RCC’s “customers.”
15 Applicants for service are merely prospective customers. The Timm and Taylor residents
16 are not even applicants for RCC service. Equating applicants in currently unserved areas
17 with “customers” in a Commission footnote to create an obligation to serve completely
18 ignores the provisions of 47 U.S.C. § 214, numerous FCC orders, RCW 80.36.090, and
19 WAC 480-120-071.

20 IV. Cost Recovery Is An Important Factor In Determining the “Reasonableness” of a Request
21 For Service.

22 Qwest’s argument on cost recovery completely misses the point. Qwest
23 addressed only one aspect of it various cost recovery mechanisms, raising a technical question
24 about whether its admitted \$23 million in access charge revenues is simply mislabeled as
25 universal service. Qwest response at 9. This argument is merely a diversion from the RCC’s
26 points, which are: first, as a monopoly carrier Qwest has extensive indirect cost recovery

1 mechanisms such as access charges, while RCC is limited as a competitive carrier; and second,
2 Qwest has a direct and full cost recovery potential under the Line Extension Rule, while RCC
3 has no such mechanism.

4 Qwest dismisses RCC's cost recovery argument under RCW 80.36.090, arguing
5 that the test is whether a service request is "reasonable." Qwest response at 12. That argument
6 begs the question of what factors go into an evaluation of what is reasonable. It would defy logic
7 to ignore the fact that a carrier cannot recover the costs of providing the requested service in
8 determining whether that request were reasonable.

9 **CONCLUSION**

10 For the foregoing reasons, and the reasons set forth in RCC's prior briefs, the
11 Commission should dismiss RCC from this proceeding on the grounds that wireless carriers
12 should not be joined in waiver proceedings under WAC 480-120-071 for purposes of discovery
13 or any other reason.

14 Respectfully submitted this 3rd day of April, 2003.

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